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Total Number of Pages in This Submission

5

Application Number	09/784,394
Filing Date	02/15/2001
First Named Inventor	Marc Eller
Art Unit	2611
Examiner Name	Jason Salce
Attorney Docket Number	12179-P081P1

ENCLOSURES (Check all that apply)

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Firm Name	Winstead Sechrest & Minick P.C.		
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12179-P081P1



PATENT

- 1 -

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application: Eller et al.

Serial No.: 09/784,394

Filed: February 15, 2001

Art Unit: 2611

Examiner: Jason Salce

For: SYSTEM AND METHOD FOR SELLING ADVERTISING SPACE
ON ELECTRONIC DISPLAYS USING DIGITAL TELEVISION
SPECTRUM

Mail Stop Appeal Brief - Patents
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REPLY BRIEF

The Examiner has continued to assert that Applicants' disclosure of cable networks in the provisional applications do not cover digital cable, and more specifically digital television broadcast networks. However, the standard is whether or not one skilled in the art at the time of the filing of these provisional applications would have understood a cable network to include digital cable, and thus digital television broadcast networks.

CERTIFICATION UNDER 37 C.F.R. § 1.8

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Toni Stanley

(Printed name of person certifying)

A handwritten signature in cursive script that reads "Toni Stanley".

Applicants respectfully assert that one skilled in the art would have understood cable networks to include such digital networks. As the online article from the National Cable and Telecommunications Association attached hereto states, the cable operating companies commenced a major upgrade of their distribution networks to broadband networking, including digital cable services in the mid to late 1990s. The provisional applications were filed in 1999, thus the state of the art at that time did include digital television broadcast networking, i.e., digital cable.

The difference between analog and digital cable is the set top box converter. The cable is not different. When Applicants listed cable in the provisional, this covered all forms of cable transmission, which at that time reasonably included analog and digital. The Examiner is now attempting to limit Applicants' provisional to just analog cable. But, Applicants do not state that the "cable" is only analog.

What if Applicants were instead asserting that the present claims covered "analog television broadcast networks"? Would the Examiner then assert that this was not covered? Such an assertion by the Examiner would be consistent with the Examiner's present viewpoint. But this does not make sense, since then neither analog nor digital would be covered. If Applicants merely disclosed "sandwiches" in a provisional patent application, would the Examiner then assert that "ham sandwiches" were not covered?

It was well-known in the art at that time that cable included digital. The provisionals teach using cable. One skilled in the art could have built the claimed invention at that time using cable networks. Since digital cable was well-known at that time, this was also taught.

On page 8 of the Examiner's Answer, the Examiner asserts that nowhere does the provisional application 60/130,602 provide support for a digital or analog television network. This is preposterous. The Examiner admits that the provisional application states that cable can be used. Now the Examiner is attempting to exclude even analog television from being supported by the provisional application? Then in

1999, what did cable broadcast? Of course analog television is supported by the disclosure of merely "cable," and since digital cable existed at that time, digital cable is also supported.

The Examiner then goes on to try to assert that the provisional application does not support a digital television broadcast network. However, the application does recite the use of fiber optic cable for uploading the ads. Fiber optic cable necessarily includes digital transmissions.

Applicants respectfully assert that the Examiner is attempting to make arguments that just don't make common sense.

The Examiner has further asserted on page 10 of the Examiner's Answer that *Carney's* provisional application reads on the claim limitations "rejected by the *Carney* Patent" and the figures disclosed on pages 12 and 20 of *Carney's* provisional application, as well as various other pages of the disclosure. First of all, if the Examiner believes that any of the "various other pages" of the provisional application disclose the recited claim limitations, then the Examiner must point those out and cannot just blindly say that they are disclosed somewhere. Secondly, the figures on pages 12 and 20 of *Carney's* provisional application do not disclose selecting, via the third information handling system, which of the first and second electronic billboards will display the information.

Further, the Insight article in *Rhoads* just further proves that the use of cable to transmit digital television was well known in the art at the time of the provisional patent applications, and thus one skilled in the art at the time these applications were filed would have known they could use a cable network to transmit digital television broadcasting.

The Examiner then goes on to attempt to assert that *Rhoads* discloses transmitting video to a billboard. This also is preposterous. There are no physical billboards to which video transmissions are sent. There are no video signals that are transmitted and displayed on billboards inside a ballpark or football stadium. This is

merely a trick of digital television broadcasting whereby video signals are merged for display on the TV to viewers. Attempting to assert that *Rhoads* teaches more than this is unreasonable.

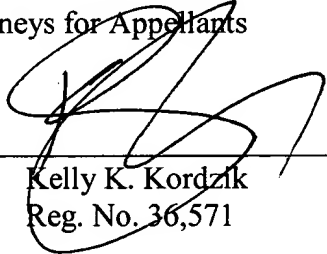
With respect to the citation of the *Honey* reference, the Examiner's stated motivation to combine these references is without objective support. There is nothing within any of these cited references that would suggest to one skilled in the art to combine these references in the manner that the Examiner has asserted.

Respectfully submitted,

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12179-P081P1 12/16/2005